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**PRESERVE THE DUNES, INC.**

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June 10, 2012

Advisory Board

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Representative Frank Foster, Chairman  
Natural Resources, Tourism and Outdoor Recreation Committee  
Michigan House of Representatives  
P.O. Box 30014  
Lansing, MI 48909

SENT VIA EMAIL

Re: HB-5647

Dear Representative Foster:

Preserve the Dunes is a grass roots, not-for-profit, volunteer organization with over 1,700 members and supporters founded in 1997 to work for preservation of the critical dunes and associated ecosystem in western Michigan. We oppose House Bill 5647 because it will lead to the gradual degradation of the dunes. We ask you to pause, review the bill again and consider its potential damage and then rewrite it.

The bill is tantamount to a repeal of the Sand Dune Protection and Management Act – legislation that has served the state and its people well for 33 years and slowed the pace of destruction.

The bill proposes [4:9-14]<sup>1</sup> to delete paragraph 35302(c) which reads "The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur *only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.*" This paragraph is important because it clarifies that preserving the dunes is in the public interest and a key value of the law. It should stand.

The law was originally enacted because the dunes were being unnecessarily and unjustifiably destabilized and dunal ecosystems destroyed. We should not return to those practices.

In its new definition of purpose [(35302(B), 4:15-30)] the bill presents a false choice between preserving the critical dunes and economic development and then proceeds to shift the odds in favor of economic benefits.

A permit SHALL be approved [35304(1)(G), 7:7-17] unless it is shown that "the *actual harm will significantly damage the public interest on the privately owned land.*" Hence, there is almost no basis for rejecting any permit application.

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<sup>1</sup> Here and afterward read as page:line referring to location in the bill.

<sup>2</sup> Professionally, as a licensed architect I have found their assistance very beneficial.

- a. Damage to the public interest will be impossible to define, much less to determine. Plus, with 35302(1)(c) being deleted, the extent of public interest is a matter of debate; never mind that the practical meaning of "significantly" is nowhere defined.
- a. "Actual damage" (versus *projected*) is impossible to show before the actual damage has been done.
- b. In paragraph 35304(1)(g) (i) and (ii) [7:25-8:3], the basis of measurement turns out to be not just significant damage to public interest on the property, it is significant damage *within the unit of government*. No single use will ever significantly deplete or degrade an entire 4,300 acre critical dune area, such as exists in Covert Township one of the most natural and beautiful CDAs.

By eliminating the condition "or is more extensive than required to implement a use for which a permit is requested" in paragraphs 35316(1)(d, e & f) [23:21-24:10] the only provisions to protect the dunes are to avoid actions that increase erosion or decrease stability. The entire ecosystem can be destroyed as long as there is no increase in erosion or decrease in dune stability. But there is much more to CDAs than piles of sand.

If you proceed with approval of the changes listed above, please consider preserving the following provisions of the current law.

- a. Allow local governments to adopt provisions that have greater protection than this law provides.
- b. In the interest of openness and citizen participation any resident or property owner who may be effected by a project should have standing to request a public hearing on a proposed project.

Replace the text [6:13] starting with "Upon the written" and ending at the end of the paragraph with:

*Upon the written request of 5 or more persons who own real property or reside within the local unit of government, or own real property or reside within 1 mile of the project, the local unit of government shall hold a public hearing pertaining to a permit application.*

- c. Let the Sec. 35323 [35:4-13] stand as is. Replacing a damaged or destroyed building with another of a different use opens the dune to potential damage not considered or evaluated when the original permit was issued.
- d. Retain all references in the current law to the Soil Conservation Districts. Their reviews of and suggestions for proposed uses are very helpful in identifying methods of construction and designs that preserve the dunes.<sup>2</sup>

Passage of this bill will appear to be a gift at the expense of the dunes to the proposers, the homebuilders and the real estate brokers. Until the real estate bubble burst, their businesses were doing extremely well. Home prices in the critical dunes soared into the millions and they will soar again as the economy improves. On the other hand the economic benefits from these revisions will be minor and damage to the dunes significant, representing a short- and long-term loss for the state.

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<sup>2</sup> Professionally, as a licensed architect I have found their assistance very beneficial.

If the legislature passes this bill, it will be substituting marginal profits to builders, developers and real estate brokers for the permanent degradation of the dunes. Why would the people of Michigan want you to do that? They don't.

While it is possible to improve the statute as it stands, enactment of this amendment will not. Instead, it would obfuscate requirements, rely on purely subjective, fuzzy standards for determining compliance, create associated delays and appeals, and reduce dune protection. In turn, development costs will rise, projects will take longer to complete and administrative and enforcement costs to the state will increase.

We have numerous other concerns with this bill and would appreciate the opportunity to discuss them with you if and when appropriate.

Thank you for your consideration of these issues.

Sincerely,



Charles F. Davis, III  
Vice-President

cc: Harold L. Haugh, Minority-Vice Chair  
Matt Huuki, Majority Vice-Chair  
James Clift, Michigan Environmental Council  
Brad Garmon, Michigan Environmental Council